

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>COLETA M. PROVINCE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>THE BOEING CO. - WICHITA</b>	)	Docket No. 160,594
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

On July 6, 1995, the application of the respondent for review by the Workers Compensation Appeals Board of an Award issued by Administrative Law Judge John D. Clark on February 20, 1995, came on for oral argument in Wichita, Kansas.

**APPEARANCES**

Claimant appeared by and through her attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Eric K. Kuhn of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Edward D. Heath, Jr., of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) Whether notice was properly given, pursuant to K.S.A. 44-520 (Ensley).
- (2) If notice was not properly given, whether respondent was prejudiced in not receiving notice of claimant's accidental injury pursuant to K.S.A. 44-520 (Ensley).

Additional issues decided by the Administrative Law Judge but not appealed to the Workers Compensation Appeals Board are herein affirmed insofar as they are not in contravention to the findings expressed in this opinion.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant, a long-term employee of respondent, began developing upper extremity problems in May 1990, when she began experiencing numbness, tingling, and pain into her hands, arms, and shoulders. She continued working in pain until May 1991 when she could no longer stand the pain and sought medical attention. She advised her supervisor, Donna Holt, of her problems and was sent to Boeing Central Medical. Claimant had earlier gone to her own physician, Dr. Hershberger, who diagnosed her with carpal tunnel syndrome.

Respondent contends claimant failed to provide notice to respondent of her ongoing condition as it started in May 1990 and claimant did not report it until approximately May 17, 1991. When claimant filed her Form E-1 with the Workers Compensation Division she alleged a May 17, 1991, injury. Respondent does not argue claimant failed to provide notice within 10 days of May 17, 1991. Respondent, instead, argues that claimant's actual date of accident preceded the alleged date and claimant's failure to notify the respondent at an earlier time resulted in respondent being prejudiced by being unable to provide early diagnosis and treatment of claimant's condition resulting in an aggravation of claimant's symptoms and conditions. In support of this position respondent cites Pike v. Gas Service Co., 223 Kan. 408, 573 P.2d 1055 (1978). Pike does stand for the proposition that an employer is prejudiced if the employer is denied the opportunity to properly and timely investigate the accident and to furnish prompt medical treatment. Prejudice may arise if

claimant's injury is aggravated by reason of the inability of the employee to provide early diagnosis and treatment. 223 Kan. at 409-410.

Key to this decision is the determination of claimant's date of accident. In order for respondent's position to be successful, the Appeals Board would necessarily have to find a date of accident preexisting May 17, 1991. This date, the date claimant alleged accidental injury, is also the last date claimant worked for respondent prior to leaving her employment in order to undergo treatment for her carpal tunnel syndrome. Respondent's argument that an earlier date of accident should be found in a carpal tunnel case has been addressed and rejected by the Kansas Court of Appeals on several prior occasions. The Court has described carpal tunnel syndrome as a "hybrid condition that is neither fish nor foul." Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 229, 885 P. 2d 1261 (1994). Carpal tunnel syndrome is seen as a condition not logically said to be either personal injury or occupational disease. The Court held that because of the complexities of determining the date of injury in a carpal tunnel syndrome case, the process would be simplified by adopting a rule specifically pinpointing the date of accident as the "last date worked by the claimant." 20 Kan. App. 2d at 230.

The Court in Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995), noted that, at times, the last date worked cannot be seen as the final date of accident. Condon points to language in Berry noting that the date of accident may, in actions involving carpal tunnel syndrome, be "the last day on which a claimant performs services for his or her employer and is required to stop working as a direct result of the claimant's pain and disability resulting from carpal tunnel syndrome." Condon v. Boeing Co., at 587; Berry, Syl. ¶ 3. This rule was recently affirmed in Bradford v. Boeing Military Airplanes, (Kansas Court of Appeals No. 74,594, opinion filed September 27, 1996). In this instance respondent's argument that claimant's accident occurred prior to May 17, 1991, must be rejected by the Appeals Board as contrary to the Court of Appeals' opinions in Berry, Condon, and Bradford.

K.S.A. 44-520 (Ensley) requires notice to be provided to the employer within 10 days after the date of the accident. In finding claimant's injury date occurred on May 17, 1991, the Appeals Board also finds that timely notice was provided. As such, the question of whether respondent was prejudiced by lack of timely notice is rendered moot.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated February 20, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stephen J. Jones, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director